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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,735	05/08/2006	Bruce G. Kania	FOU06-0002	5516
45766 7590 07/31/2008 ANTOINETTE M. TEASE P. O. BOX 51016 BILLINGS, MT 59105				
EXAMINER VALENTI, ANDREA M				
ART UNIT 3643		PAPER NUMBER		
MAIL DATE 07/31/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/595,735

**Applicant(s)**

KANIA ET AL.

**Examiner**

ANDREA M. VALENTI

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-121 is/are pending in the application.
- 4a) Of the above claim(s) 1-93, 98 and 100-121 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 94-97, 99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I, claims 94-97, 99 in the reply filed on 24 June 2008 is acknowledged. The traversal is on the ground(s) that the PTO has not carried forward its burden of proof of establishing distinctness for each and every group. This is not found persuasive because an international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). It is the examiner's maintained position that the group of inventions claimed in this application, do not contain a technical relationship among those inventions involving one or more of the same or corresponding special technical features. In view of, MPEP Rule 1.475(b), the application contains claims to more than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention is not be present.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 94, 95, 96 are rejected under 35 U.S.C. 102(b) as being anticipated by United Kingdom Patent GB 2313326 A to Wai Seng Lam.

Regarding Claims 94, 95 and 96, Wai Seng Lam teaches a floating habitat comprising buoyant growth medium (Wai Seng Lam Fig. 3 #70) and a source of compressed air (Wai Seng Lam Fig. 3 #68), wherein the source of compressed air creates air bubbles that are sparged under, around, through the floating habitat (Wai Seng Lam page 2 line 10-12 and page6 line 21-23).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 97 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2313326 A to Wai Seng Lam in view of Japanese Patent JP 2001276861 A to Yamamoto.

Regarding Claim 97, Wai Seng Lam is silent on wherein the buoyant growth medium comprises natural material. However, Yamamoto teaches a floating buoyant growth medium of natural material (Yamamoto #1 and 3, wood or bamboo). It would have been obvious to one of ordinary skill in the art to modify the teachings of Wai Seng Lam at the time of the invention with the teachings of Yamamoto since the modification is merely the simple substitution of one known island feature for another natural island feature for no adverse effects on the environment (as taught by Yamamoto) and for a more aesthetic appeal.

Regarding Claim 99, Wai Seng Lam as modified teaches the buoyant growth medium further comprises one or more plant growth enhancer(s). (Yamamoto #6 carbon chips).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,992,104; U.S. Patent No. 6,000,551; Japanese Patent JP 2002000098 A; Japanese Patent JP 11164630A; Japanese Patent JP 10113686.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/  
Primary Examiner, Art Unit 3643

24 July 2008